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4 UNITED STATES DISTRICT COURT  
5 DISTRICT OF NEVADA

6 \* \* \*

7 DEYAWN WASHINGTON,

8 Plaintiff,

9 v.

10 STATE OF NEVADA, et al.,

11 Defendants.

Case No. 2:18-cv-00809-GMN-PAL

**ORDER**

(IFP App. – ECF No. 1)

12 This matter is before the court on Plaintiff Deyawn Washington Application to Proceed *In*  
13 *Forma Pauperis* (ECF No. 1) pursuant to 28 U.S.C. § 1915 and LSR 1-1 of the Local Rules of  
14 Practice. This Application is referred to the undersigned pursuant to 28 U.S.C. § 636(b)(1)(A) and  
15 LR IB 1-3 of the Local Rules of Practice.

16 Mr. Washington is a prisoner in the custody of the Nevada Department of Corrections at  
17 the High Desert State Prison. He proceeding in this action *pro se*, which means that he is not  
18 represented by an attorney. *See* LSR 2-1. Washington has also requested permission to proceed  
19 *in forma pauperis* (“IFP”), meaning without prepaying the filing fee.

20 Pursuant to 28 U.S.C. § 1914(a) and the Judicial Conference Schedule of Fees, a \$400  
21 filing fee is required to commence a civil action in a federal district court. The court may authorize  
22 a prisoner to begin an action without prepaying the filing fee if the prisoner submits an IFP  
23 application on the court’s form along with the required supporting documentation. 28 U.S.C.  
24 § 1915(a); LSR 1-1, LSR 1-2.<sup>1</sup> In general, when a district court grants a prisoner IFP status, federal  
25 law states that “the prisoner shall be required to pay the full amount of the filing fee.” 28 U.S.C.  
26 § 1915(b)(1). Prisoners must pay an initial partial filing fee of the greater of 20 percent (20%) of

27 <sup>1</sup> The \$400 filing fee consists of a \$350 base fee and a \$50 administrative fee. Pursuant to the court’s  
28 Schedule of Fees, the \$50 administrative fee does not apply to prisoners granted IFP status under 28 U.S.C.  
§ 1915. Thus, prisoners granted IFP status are only required to pay the \$350 base fee.

1 the average monthly deposits or 20 percent (20%) of the average monthly balance of his account  
2 for the six months immediately preceding the start of this action. *Id.* A prisoner's failure to pay  
3 the initial partial filing fee before the deadline stated in the court's order, which typically allow 30  
4 days, is "cause for dismissal of the case." LSR 1-3(c). After the initial partial filing fee is paid,  
5 the facility having custody of the prisoner will forward payments from the prisoner's account each  
6 month. 28 U.S.C. § 1915(b)(2).

7 Here, Mr. Washington has requested authority to proceed IFP; however, his IFP  
8 Application is incomplete. The Local Rules and § 1915 specifically require three items be  
9 submitted to this court with a prisoner's IFP application: (1) a financial certificate signed by an  
10 authorized prison official,<sup>2</sup> (2) a copy of the prisoner's trust account statement for the six-month  
11 period prior to filing,<sup>3</sup> and (3) a financial affidavit and acknowledgement signed by the prisoner  
12 showing an inability to prepay fees and costs or give security for them.<sup>4</sup> Additionally, LSR 1-1  
13 states that a prisoner's IFP "application must be made on the form provided by the court." *Id.* Mr.  
14 Washington submitted the required affidavit and acknowledgement on the form provided by this  
15 court, but he did not include a certified copy of his inmate trust account statement or the correct

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16 <sup>2</sup> LSR 1-2 provides:

17 An application to proceed *in forma pauperis* received from an incarcerated or  
18 institutionalized person shall be accompanied by a certificate from the institution certifying  
19 the amount of funds currently held in the applicant's trust account at the institution and the  
20 net deposits in the applicant's account for the six (6) months preceding the submission of  
the application. If the applicant has been at the institution for less than six (6) months, the  
certificate shall show the account's activity for such period.

21 <sup>3</sup> 28 U.S.C. § 1915(a)(2) states:

22 A prisoner seeking to bring a civil action or appeal a judgment in a civil action or  
23 proceeding without prepayment of fees or security therefor, in addition to filing the  
24 affidavit filed under paragraph (1), *shall submit a certified copy of the trust fund account  
statement (or institutional equivalent) for the prisoner for the 6-month period immediately  
preceding the filing of the complaint or notice of appeal*, obtained from the appropriate  
official of each prison at which the prisoner is or was confined.

(emphasis added). *See also* LSR 1-2.

25 <sup>4</sup> 28 U.S.C. § 1915(a)(1) states:

26 any court of the United States may authorize the commencement, prosecution or defense  
27 of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment  
28 of fees or security therefor, by a person who submits an affidavit that includes a statement  
of all assets such prisoner possesses that the person is unable to pay such fees or give  
security therefor.

*See also* LSR 1-1.

1 financial certificate. The prisoner IFP application required in this federal district court differs from  
2 the application used in Nevada state courts. It appears that he submitted the financial certificate  
3 provided by the Nevada state courts, which does not contain the appropriate financial information  
4 regarding an inmate's current account balance, average account balance, average monthly  
5 deposits, and the resulting filing fee as required by § 1915(a). Thus, prisoners must submit the  
6 correct form for this court's review. Although he may qualify to proceed IFP, the court cannot  
7 determine the amount of the initial partial filing fee because Mr. Washington has not submitted  
8 the certified trust fund account statement and the correct financial certificate signed by an  
9 authorized prison official. Therefore, the court will deny Mr. Washington's IFP Application  
10 without prejudice.

11 In addition, the court notes that it is required to conduct a preliminary screening in any case  
12 in which a prisoner is granted IFP status or seeks damages from a governmental entity or officer  
13 or employee of a governmental entity. 28 U.S.C. §§ 1915(e)(2), 1915A(a); *Jones v. Bock*, 549  
14 U.S. 199, 213–14 (2007) (screening is required before allowing an IFP complaint to move forward,  
15 issuing summonses, or requiring a responsive pleading); *see also* LSR 1-3(e) (stating that IFP  
16 applicants in civil rights actions “must pay the full partial filing fee before the court will order  
17 service of process”). In its screening, the court identifies any plausible claims and dismisses any  
18 claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek  
19 monetary relief from a defendant who is immune from such relief. 42 U.S.C. § 1997e; 28 U.S.C.  
20 § 1915A(b). Mr. Washington is therefore advised that even if this action is dismissed, he must  
21 still pay the \$350 base filing fee pursuant to § 1915(b) and the monthly payments will continue  
22 from his inmate account until the balance is paid. *See Washington v. L.A. County Sheriff's Dep't*,  
23 833 F.3d 1048, 1051–52 (9th Cir. 2016).

24 Mr. Washington's complaint attempts to state a claim against defendants, for violating his  
25 due process and equal protection rights for failing to bring him to trial in his state criminal  
26 proceeding within 60 days. He claims he did not waive his right to trial within 60 days, that his  
27 trial was set 95 days from his initial arraignment and as a result there was a delay in getting the  
28 case formally dismissed. This delay “caused a snowball effect” and kept him in custody on a

1 parole violation longer because he could not get to the Parole Board to have his parole reinstated.  
2 Mr. Washington is advised that federal district courts do not have appellate jurisdiction over a state  
3 court, whether by direct appeal, mandamus, or otherwise. *See, e.g., Rooker v. Fidelity Trust Co.*,  
4 263 U.S. 413, 415–16 (1923); *D.C. Court of Appeals v. Feldman*, 460 U.S. 462, 482–86 (1983).  
5 It is unclear whether Washington has any pending criminal case, or whether he is incarcerated as  
6 a result of a prior conviction and parole violation. When a prisoner files a civil rights action, the  
7 *Younger* abstention doctrine generally prevents federal courts from interfering in pending state  
8 criminal proceedings, even if there is an allegation of a constitutional violation. *Younger v. Harris*,  
9 401 U.S. 37, 53–54 (1971).<sup>5</sup>

10 Accordingly,

11 **IT IS ORDERED:**

- 12 1. Plaintiff Deyawn Washington’s Application to Proceed *In Forma Pauperis* (ECF  
13 No. 1) is DENIED WITHOUT PREJUDICE.
- 14 2. The Clerk of Court shall RETAIN the Complaint (ECF No. 1-1), but **SHALL NOT**  
15 issue summons.
- 16 3. The Clerk of Court shall MAIL Mr. Washington a blank IFP application for  
17 incarcerated litigants along with instructions for completing the application.
- 18 4. Mr. Washington must file a completed IFP application on or before **June 22, 2018**, and  
19 must include: (i) a financial certificate signed by an authorized prison official and Mr.  
20 Washington, (ii) a financial affidavit and acknowledgement signed by Mr. Washington,  
21 and (iii) a statement of his inmate trust account for the six-month period prior to filing.
- 22 5. Alternatively, Mr. Washington shall pay the \$400 filing fee, accompanied by a copy of  
23 this Order, on or before **June 22, 2018**.
- 24 6. Mr. Washington’s failure to comply with this Order by (a) submitting a completed IFP  
25 application with the required documents, or (b) paying the filing fee before the **June**

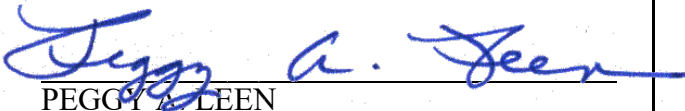
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26 <sup>5</sup> *See also Sprint Commc’ns, Inc. v. Jacobs*, --- U.S. ---, 134 S. Ct. 584, 588 (2013) (“federal-court  
27 abstention is *required*” when there is “a parallel, pending state criminal proceeding”) (emphasis added);  
28 *Gilbertson v. Albright*, 381 F.3d 965, 981 (9th Cir. 2004) (en banc) (finding that *Younger* applies to damages  
claims as well as claims for injunctive or declaratory relief).

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**20, 2018** deadline will result in a recommendation to the district judge that this case be dismissed.

Dated this 23rd day of May, 2018.

  
PEGGY A. LEEN  
UNITED STATES MAGISTRATE JUDGE